

AG Contract No.: KR04-0295TRN
ADOT ECS File No. JPA 03-142
Project: NH-053-2(035)b
Section: SR 260 Kohl's Ranch
TRACS No.: H447301 C
Budget Source Item No. 13800

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE
TONTO NATIONAL FOREST

THIS AGREEMENT is entered into 11th 7 May, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the UNITED STATES DEPARTMENT OF AGRICULTURE, TONTO NATIONAL FOREST, acting by and through its Contracting Officer (the "Forest Service").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The Forest Service is empowered by Cooperative Funds Act of June 30, 1914 (16USC 504) and has authorized the undersigned to execute this agreement on behalf of the Forest Service.
3. Incident to a highway improvement project contemplated by the State, on State Route (SR) 260, Kohl's Ranch Section, Project Number: **NH-053-2(035)B**, TRACS Number: **H4473 01C**, the construction of the improvements will result in the permanent loss of waters of the United States owned or controlled by the Forest Service. The State agrees to be responsible for the off-site mitigation, through payment not to exceed \$157,740.00 all in accordance with the financial mitigation plan, herein referred to as the Project
4. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26816
Filed with the Secretary of State
Date Filed: 05/11/04

Janice K. Brewer
Secretary of State

By: Timothy J. Haenewald

II. SCOPE OF WORK

1. The Forest Service will:

a. Upon execution of this agreement invoice the State no more than monthly an amount not to exceed \$157,740.00, for costs associated to complete the Project. Request for payment shall be submitted using the State's Progress Payment Report Form (Attached). Electronic forms can be requested through Joint Project Administration, at the address provided under Section III. Paragraph 9.

b. Provide on a monthly basis to the State, an accounting of the monies expended for the Project

2. The State will:

a. Be responsible for an amount not to exceed \$157,740.00, for costs associated to complete the Project

b. Upon execution and within 30 days upon receipt and approval of an invoice from the Forest Service, remit to the Forest Service, an amount not to exceed \$157,740.00, for costs associated to complete the Project.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project and final accounting. However, this agreement may be cancelled prior to the disbursement of funds transferred under this agreement with thirty (30) days written notice to the other party.

2. This agreement shall become effective upon signature of the parties and filing with the Arizona Secretary of State.

3. It is understood by the parties herein, The Project is intended to be complete within five years of approval. If the Project is not completed as noted herein, the parties may extend the agreement by Amendment.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as it relates to conflicts of interest on behalf of State employees.

5. The continuation of this agreement for future fiscal years is subject to receipt of apportionment authority by the Forest Service.

6. The provisions of Arizona Revised Statutes Section 35-214 relating to 5-year record retention for audit purposes are applicable to this contract.

7. Applicable laws of the State and Federal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement that is compliant with applicable laws and regulations of the State and Federal government and acceptable to the State and Federal government. Such process will include a provision for non-binding arbitration.

8 No member of, or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

9 Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

10 Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

11 Improvements placed on National Forest System land at the direction of both of the parties, shall thereupon become property of the United States, and shall be subject to the same similar nature. No part of this instrument shall entitle the cooperator to any share or interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.

12 The cooperator has the legal authority to enter into this instrument, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the project.

13 This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.

14 The instrument is executed as of the date of the last signature and is effective for five years from that date at which time it will expire unless extended.

15 Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

16 The principal contacts for this instrument are:

Project Contact

Mr. Bahram Dariush,
Statewide Project Management
Arizona Department of Transportation
205 South 17 Avenue, Mail Drop 614E
Phoenix, AZ 85007
Phone: (602) 712-8427
FAX: (602) 712-1630

Administrative Contact

Joint Project Administrator
Arizona Department of Transportation
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
Phone (602) 712-8088
FAX: 602-712-7424

Forest Service Project Contact

Tonto National Forest
Mr. Terry Brennan
2324 E. McDowell Road
Phoenix, AZ 85006
Phone: (602) 225-5200
Fax: (602) 225-5295

Forest Service Administrative Contact

Tonto National Forest
Ms. Robin Rowe
2324 E. McDowell Road
Phoenix, AZ 85006
Phone: (602) 225-5200
Fax: (602) 225-5295

17 Any cooperator contributions made under this instrument do not be direct reference or implication conveys Forest Service endorsement of the cooperator's products or activities.

18. Pursuant with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

US DEPARTMENT OF AGRICULTURE

Tonto National Forest

By Thomas J. Klabunke
KARL SIDERITS
G: Forest Supervisor

Date April 30, 2004

STATE OF ARIZONA

Department of Transportation

By Susan Tellez
SUSAN TELLEZ
Contract Administrator

Date 5-3-04

The authority and format of this instrument
Have been reviewed and approved for signature.

By Loretta Orona
LORETTA ORONA
Grants & Agreements Specialist

Date 4/28/04

State Route 260
Kohl's Ranch Section
Tonto Creek Area

Project Description:

Habitat Replacement/Improvement

NEPA Clearance	\$15,000
Bat Abodes	\$20,000
Water Catchments	
3 @ \$8,000 ea	\$24,000
Riparian Meadow Replacement	\$30,000
Monitoring of above project implementation	
Inc. reports	\$15,000

Tonto Creek Watershed Mitigation

NEPA Clearance	\$ 8,000
Riparian Plantings and Revegetation	\$20,000

Subtotal	\$132,000
19.5% overhead	\$25,740
Total	\$157,740



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0295TRN (**JPA 03-142**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 5, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis". The signature is written in dark ink and is positioned above the printed name of the signatory.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section